

RICHARD P. METTKE -vs-
TOUCHNET INFORMATION SYSTEMS, INC.

DANIEL J. TOUGHEY, 6/16/98

BOWEN MOTTER REPORTING - (816) 421-2876



Page 1		Page 3	
1	IN THE UNITED STATES DISTRICT COURT	1	INDEX OF EXHIBITS (CONT'D.)
2	FOR THE NORTHERN DISTRICT OF ALABAMA	2	NO. DESCRIPTION PAGE
3	EASTERN DIVISION	3	5 Videotape "TouchFax America" 40
4		4	6 1st brochure of product 54
5	RICHARD P. METTKE,)	5	7 TF700 TouchNet terminal brochure 55
6	Plaintiff,)	6	8 TF700 brochure 56
7	vs.) No. 98-PT-596-E	7	9 Not identified -
8	TOUCHNET INFORMATION SYSTEMS,)	8	10 Ad for Telephony Magazine 57
9	INC.,)	9	11 TF450 brochure 58
10	Defendant.)	10	12 Interactive World article, 10/92 59
11		11	13 Multimedia Interactive Terminal Loc. documt 59
12	THE DEPOSITION OF DANIEL J. TOUGHEY, taken on	12	14 KC Business Journal article, reprint 60
13	behalf of the Plaintiff June 16, 1998, at the law	13	15 1992 brochure 60
14	offices of Spencer, Fane, Britt & Browne, 1400	14	16 Copy of Patent # 4359631 63
15	Commerce Bank Building, 1000 Walnut, Kansas City,	15	17 Info from VPR Creative Group 66
16	Missouri.	16	18 Invoice from Spinnaker 67
17	A P P E A R A N C E S	17	19 Invoice to Prodigy 68
18	For the Plaintiff: Tobor & Goldstein	18	20 Printout of source code/transaction log 69
19	1360 Post Oak Blvd., Ste 2300	19	21 Documents re: TOM Services, Inc. 70
20	Houston, Texas 77056-3023	20	22 Documents re: Mediatel 74
21	By Mr. John T. Polasek	21	23 Fax to D. Vermeire, 11/92 77
22	For the Defendant: Spencer, Fane, Britt & Browne	22	24 Document to D. Vermeire, 9/92 79
23	1000 Walnut, Suite 1400	23	25 License Agreement 80
24	Kansas City, Missouri 64106	24	(Exhibits were retained by Mr. Polasek)
25	By Mr. Richard P. Stitt	25	
Page 2		Page 4	
1	S T I P U L A T I O N S	1	DANIEL J. TOUGHEY,
2	It is hereby stipulated and agreed by and	2	a Witness, of lawful age, being produced, sworn and
3	between the parties herein that presentment to the	3	examined on behalf of the Plaintiff, depose and
4	attorneys of record of a copy of this deposition shall	4	saith:
5	be considered submission to the witness for his	5	EXAMINATION
6	signature within the meaning of Federal Rules of Civil	6	BY MR. POLASEK:
7	Procedure; but shall in no way be considered as a	7	Q Mr. Toughey, would you go ahead and state your
8	waiver of the witness' signature, and is to be signed	8	name for the record, please?
9	at any time before the time of trial; and if not	9	A Daniel J. Toughey.
10	signed by time of trial, may be used with the same	10	Q Mr. Toughey, have you ever been deposed before?
11	force and effect as if signed.	11	A No.
12	I N D E X	12	Q I take it you have had an opportunity to talk to
13	WITNESS: PAGE	13	Mr. Stitt about what we are going to do here
14	DANIEL J. TOUGHEY	14	today?
15	Examination by Mr. Polasek 4	15	A Yes.
16	Examination by Mr. Stitt 83	16	Q Okay. As you are aware, the court reporter gave
17	Further Examination by Mr. Polasek 98	17	you an oath and it is the same oath that you would
18	SIGNATURE: 107	18	take if you were testifying down at the
19	CERTIFICATE: 108	19	courthouse. Do you understand that, sir?
20	INDEX OF EXHIBITS	20	A Yes.
21	NO. DESCRIPTION PAGE	21	Q You understand the same pains and penalties of
22	1 Notice 5	22	perjury apply here just as they would down in
23	2 Answer to Interrogatory No. 1 17	23	front of the judge?
24	3 Network Topograph Diagram 20	24	A (The witness nodded his head.)
25	4 John Murphy Affidavit 25	25	Q Is that a yes?

Page 41

1 MR. POLASEK: Okay. I appreciate that.
2 Q (By Mr. Polasek) This videotape that has been
3 marked as Exhibit 5, your attorney referred to it
4 as an exact copy of the original. Is it a copy of
5 the master tape that was prepared by I believe it
6 was VPR?
7 A I don't know.
8 Q I mean, do you know if any editing has been done
9 to this tape? Or let me say, do you know of an
10 unedited version of the tape?
11 A I don't really know. I mean, all I know is that
12 that tape when we received it in 1993, it hasn't
13 been modified at all, if that's what --
14 Q From VPR?
15 A Right, exactly. So the original production,
16 wherever the master is, would be no different
17 whatsoever. If that is not a copy of the master,
18 there would be no difference whatsoever. There
19 has been no modifications to it.
20 Q Let me ask you this. Was the video shot or
21 prepared on site or was it prepared -- were
22 terminals taken to VPR?
23 A There is kind of both. There is plenty of live
24 shots in there that show locations with a TouchNet
25 terminal in them, and those were live locations

Page 42

1 here in the Kansas City area. And then there were
2 some -- there are some other shots in there that
3 would be more taken from a demonstration system or
4 something like that. But if I remember right, it
5 is mostly live location shots.
6 Q All right. Why don't we take just a minute and
7 view it, see what it shows here.
8 (Whereupon, the videotape, Exhibit 5,
9 was played at this time to counter 19.)
10 Q (By Mr. Polasek) I paused the videotape there. I
11 think it is somewhere around 19 seconds. We have
12 a young lady dressed in red, blond hair that is
13 inserting something into the machine. Can you
14 tell me what she is sticking into the machine?
15 A A credit card.
16 Q Is that a credit card? To me it looks like a
17 piece of paper, perhaps a reinforced piece of
18 paper almost like a parking paper, parking card.
19 It didn't look like a short Master Card, VISA card
20 or American Express.
21 A For sure it is a magnetic stripe card, so it could
22 be -- we had TouchFax cards at the time. There
23 were subscriber cards for discounts on services
24 and things like that and commercial credit cards.
25 But that -- where she is sticking that into that

Page 43

1 is a magnetic stripe card reader. It is
2 definitely a magnetic stripe card.
3 Q Let me ask you this. Just above the place where
4 she is inserting this, what you say is a credit
5 card or magnetic card --
6 A Right.
7 Q -- what is this other dark spot on the right side
8 of the terminal?
9 A We call it -- I mean, internally, we call it a
10 credit card icon, which basically shows them how
11 to swipe the card and what cards are accepted.
12 And there is normally above that three easy steps,
13 touch the green button, swipe your card when
14 asked, if asked.
15 Q Okay. So it is not another card reader or
16 something?
17 A No, it is on the metal.
18 Q Okay. Why don't we finish watching it.
19 (Whereupon, the videotape, Exhibit 5,
20 was resumed and played until counter 37.)
21 Q (By Mr. Polasek) Now, I don't know if you saw it.
22 It flashes up there very quickly, it was somewhere
23 around the 36 second mark, one of the users was
24 pushing or was interacting with the Touchscreen
25 and you saw the little rectangular box for the

Page 44

1 internet pop up there. Did you notice that?
2 A No, I didn't.
3 Q Let's see if we can go back. I'm not able to get
4 it stopped there. See if I can try it again.
5 MR. STITT: Let me give it a try.
6 THE WITNESS: I think I did see that.
7 You are in front of it now.
8 (Whereupon, the videotape, Exhibit 5,
9 was rewound to counter 34.)
10 Q (By Mr. Polasek) Now that we have been able to
11 stop the tape, it shows a rectangular gold block
12 labeled internet. I think it is right at -- I
13 thought it was the 36 second mark. It may be 34.
14 MR. STITT: It appears to be 34.
15 Q (By Mr. Polasek) Did that provide for access to
16 the internet? If the user was to touch that icon,
17 I guess is what you would call it, that portion of
18 the TouchNet screen, does that enable a user to
19 gain internet access or do you know?
20 A Not at that time, no. That was like MCI mail
21 above it. Those are possible uses for the system.
22 And so the reason we built this video was to sell
23 our systems. And so, again, the vision of
24 TouchFax, TouchNet was its multipurpose
25 information communication terminal that, depending

Page 45

1 on what our customers, whoever owned these things
 2 wanted to provide, they could provide that type of
 3 information. Now, these limited number that we
 4 had in Kansas City were the only systems in that
 5 time period that we owned and operated.
 6 Q Okay. When you say these that we had in Kansas
 7 City --
 8 A Right.
 9 Q -- this particular terminal which we have been
 10 able to stop the videotape on at this 34 second
 11 mark, that was not an actual terminal that was in
 12 public use, was it?
 13 A Well, actually -- I don't know. This screen shot
 14 right here, I don't think you can assume that that
 15 screen shot came from the terminal preceding it.
 16 Q Okay.
 17 A Okay.
 18 Q So this is a --
 19 A The one I saw before that, if I remember right,
 20 that was actually in Oak Park Mall, a regional
 21 shopping mall --
 22 Q Okay.
 23 A -- by the Florsheim shoe store. And that was an
 24 actual installation at that time.
 25 Q Okay.

Page 46

1 A But I think what we have done here is we have
 2 broken away to just a screen shot now, not a
 3 location shot but just a screen shot where on the
 4 menu we have listed out lots of different
 5 capabilities of the system.
 6 Q Okay. So this wasn't -- again, this screen shot
 7 then is not from an actual terminal that was in
 8 public use?
 9 A I think that is correct.
 10 Q But it is your testimony that this screen shot was
 11 included within the videotape that was prepared
 12 back in May of 1993?
 13 A Correct, as part of a marketing tool to market our
 14 systems. The videotape was manufactured, if you
 15 will, or developed for phone companies and others
 16 to see the vision. Obviously, from the user
 17 standpoint, the person walking up to the terminal,
 18 wherever, at Oak Park Mall, they could care less
 19 what the story is, they are just looking at what
 20 does this do for me. But to the BellSouth's of
 21 the world, we are trying to demonstrate all the
 22 capability of this system and expandability of the
 23 system.
 24 MR. POLASEK: Okay. Why don't we go
 25 ahead and continue on with the video.

Page 47

1 (Whereupon, the videotape, Exhibit 5,
 2 was played to counter 2:34.)
 3 Q (By Mr. Polasek) At least on the videotape I was
 4 supplied with there was a second one that I think
 5 it was an exact duplicate of the first minute and
 6 a half without music.
 7 A Okay. There without music.
 8 Q I have a question. Just a couple of seconds
 9 before where I paused the tape now at the 2:34
 10 mark, a user was removing something from an
 11 opening which I think had the label right above it
 12 that said fax info, and I forget what the other
 13 board was.
 14 A Fax info shopping.
 15 Q I take it that user is obtaining a -- is that a
 16 fax she has received?
 17 A No, just a laser printout.
 18 Q At that time --
 19 A Uh-huh.
 20 Q -- when this video was prepared?
 21 A Right.
 22 Q Did the terminals print out anything other than
 23 faxes that were being received?
 24 A Oh, yeah. And in fact, in this one, I am sure ERA
 25 printed out home listings, pictures of houses off

Page 48

1 a laser printer or stored images or retrieved from
 2 a database. And there were lots of different
 3 forms that are printed out. It printed out common
 4 business forms like purchase order examples and
 5 all kinds of things, so --
 6 Q I didn't mean to interrupt you. I am sorry.
 7 A The printer was heavily used for both obviously
 8 fax and other types of print out of stored
 9 information or retrieved information.
 10 Q Okay.
 11 (Whereupon, the videotape, Exhibit 5,
 12 was played to the end.)
 13 Q (By Mr. Polasek) I believe that is the end of the
 14 videotape there. Now, if I recall correctly, the
 15 videotape, the initial frame indicates a May 14,
 16 1993 production date. Is that true?
 17 A Yes. I mean, it is in the month of May for sure.
 18 I assume that is true. But it was definitely in
 19 the month of May.
 20 Q I will represent to you --
 21 A Yeah.
 22 Q -- I didn't pay that close attention, but the one
 23 that you previously had given to us, that TouchNet
 24 had given to us had a date of May 14, 1993.
 25 A Okay.

Page 49

Page 51

1 Q Did TouchNet keep a log of entities or people that
2 this videotape was distributed to?
3 A Not to the best of my knowledge.
4 Q Was the videotape distributed to any third party?
5 A Yes.
6 Q Do you know how many?
7 A We distributed hundreds of them. I mean, this was
8 made for the spring COMDEX show, which was the
9 first time we were exhibiting that at COMDEX as a
10 company which, as you know, is the biggest
11 computer show in the world. And there we were
12 giving out copies of the video as well as to
13 prospective, you know, buyers hopefully of a
14 system, as well as this was a main marketing tool
15 for quite awhile.
16 Q Okay. Can you name or would you have any records
17 that would indicate any specific individual that
18 this video was given to?
19 A I would have to -- I'm sure that that was given to
20 Flying J. I'm sure -- ask Mr. Murphy because he
21 was our main contact with the Bell companies. I
22 would be very confident that he would know the
23 people at the Bell companies that were given this.
24 Other than that, to the best of my knowledge, this
25 is like a handout at a trade show but I am sure

1 A We pulled the wrong invoice.
2 Q Okay. Is it your expectation that if you did in
3 fact pull the wrong invoice and you should have
4 pulled, let's say, spring of '93 show --
5 A Right.
6 Q Let me back up. When you say you think you pulled
7 the wrong invoice --
8 A Uh-huh.
9 Q -- are you talking about a spring of '93 show or a
10 spring of '94 show?
11 A Spring of '93.
12 Q Okay.
13 A We only went to -- I mean, '93 we went to both
14 spring and fall COMDEX. And there is always a
15 spring and there is always a fall COMDEX.
16 Q Did you go in '94 also?
17 A No, we didn't. '93 was the only year that we went
18 to COMDEX as a trade show.
19 Q All right. Let me ask you this. If you recall,
20 the videotape has a production date of May of '93?
21 A Uh-huh.
22 Q When is the -- when was the spring of '93 COMDEX
23 show held?
24 A In May of '93.
25 Q Okay.

Page 50

Page 52

1 that we gave it to the Bell companies, our main
2 prospect. And so John would know which ones we
3 were talking with at the time.
4 MR. POLASEK: Okay. can we take a
5 two-minute break?
6 (Whereupon, a break was taken.)
7 Q (By Mr. Polasek) Before we took this last break,
8 you said that, you testified that this videotape
9 that has been marked as Exhibit 5 was distributed
10 at the spring COMDEX show, correct?
11 A Yes.
12 Q Would you take another look at what has been
13 marked as Exhibit 4 and within that, the last two
14 pages?
15 A Okay.
16 Q Which are actually marked Defendant's Exhibits 7
17 and 8. Hopefully that won't confuse the record.
18 A Yeah.
19 Q My question is, was this videotape -- you
20 testified that this videotape was distributed at a
21 spring COMDEX show. To me it appears that the two
22 documents that I just referred to you concern a
23 different show.
24 A I think that is correct.
25 Q Okay. So --

1 A It was in Atlanta.
2 Q And you have records that indicate that the spring
3 '93 show was in Atlanta?
4 A Sure.
5 Q In May of '93?
6 A Yeah.
7 Q I would ask if you could gather those records to
8 show that --
9 A Sure.
10 Q -- and produce them to me?
11 A Uh-huh. We were also at fall obviously as well.
12 Q In '93?
13 A In '93 with the same video, the same story. So, I
14 mean, we went to both spring and fall.
15 Q Okay. Did you also go in '94 to the show?
16 A No.
17 Q But it is your testimony that both in the spring
18 and fall shows of '93 that this videotape was
19 given to prospective purchasers of your equipment?
20 A Yes.
21 Q And, again, do you have any document --
22 A Well --
23 Q Go ahead.
24 A I would qualify that. In the fall of '93, I did
25 not personally go to that show but Mr. Murphy did.

Page 81

Page 83

1 Q Okay.
2 A I don't believe in 1992 that that was the
3 internet.
4 Q Okay.
5 A Okay.
6 Q I was going to ask, it is not short for the
7 internet?
8 A Right. In September of '92, I am not sure the
9 people at the table knew all of that.
10 Q Okay.
11 A Okay. We developed all the software. The
12 product, the hardware and the software all was
13 developed here, tested here and later shipped to
14 Canada.
15 Q So units were actually shipped to Canada?
16 A Yes.
17 Q And installed in Canada?
18 A Yes.
19 Q Do you know if any of those units are still in
20 operation?
21 A No.
22 Q They are not?
23 A No. And nor is Mediatel as a division.
24 Q Okay. Did TouchNet -- let me ask you this. What
25 happened to Mediatel? —————>

1 basically don't develop technology. We do all of
2 that here. They are to market technology in
3 Canada, TouchNet technology.
4 Q And this terminal provided access to what they
5 refer to as iNet?
6 A Yes.
7 Q Did not provide access to what we would call the
8 internet?
9 A No.
10 MR. POLASEK: Okay. Mr. Stitt, I
11 understand that you are going to present Mr.
12 Vermeire to go over what we have marked as Exhibit
13 20, the software?
14 MR. STITT: That's right, yeah.
15 MR. POLASEK: Why don't we move on to
16 Mr. Vermeire.
17 MR. STITT: Okay. I have a few
18 questions for Mr. Toughey, though. We can do that
19 now and then go on to Vermeire.
20 MR. POLASEK: That is fine. I think
21 that would be the easiest.
22 MR. STITT: Yeah.
23 EXAMINATION
24 BY MR. STITT:
25 Q Mr. Toughey, if we could look again at Exhibit 23.

Page 82

Page 84

1 A Mediatel was disbanded. It was like phone
2 companies do here, the same thing. They set up
3 little groups of people to start new projects
4 based on new technology or new product offerings.
5 And if they are viable, if the business plan looks
6 good, the market trial looks good, they expand on
7 them, if not, they basically just cut them loose.
8 Q What happened to the units that had been shipped
9 to Canada to Mediatel?
10 A I think that our Canadian affiliate bought back
11 some -- they bought ten originally -- bought back
12 some number of them, maybe eight of them or
13 something like that a year later.
14 Q Okay.
15 A At ten cents on a dollar or something like that.
16 Q In 1993?
17 A Yeah.
18 Q What is the name of your Canadian affiliate?
19 A TouchNet Canada.
20 Q These units that were made for Mediatel, they were
21 made by TouchNet in I guess Missouri?
22 A Kansas.
23 Q Kansas?
24 A Yes. Yeah. The Canadian operation, they are just
25 a value added. They are a reseller. They

1 The Envoy 100 was an e-mail service, was that
2 correct?
3 A That's correct.
4 Q And the other service was Mediatel, and how did
5 you characterize that service?
6 A Well, Mediatel was really just a division of Bell
7 Canada, and they were a division that was involved
8 in the development and marketing of an on-line
9 service offering and electronic mail offering and
10 also like enhanced fax services, broadcasting,
11 faxes and stuff like that. So they were involved
12 in those three categories of different services.
13 Q During the period 1992 and into 1993, did this
14 company offer an on-line service?
15 A Yes.
16 Q How would you contact that on-line service?
17 A Just like you would at that point in time with a
18 Prodigy or America On-Line if you were a
19 subscriber to their service. You would have their
20 PC software and you would have a modem in your
21 system, your computer system, and you would dial
22 up and put in your password and your log-on and
23 then be presented with a menu of different types
24 of services. So that was the standard way to get
25 into their service.

Page 85

1 Q And this company turned to you to develop a series
2 of kiosks?
3 A Yes.
4 Q Why did they come to TouchNet to develop those
5 kiosks?
6 A Well, they either -- in reality, they either were
7 going to develop one themselves or find somebody
8 that was further along in the process. And they
9 found us or we found them and decided not to
10 reinvent the wheel, that we already had everything
11 they were looking for. The only component that
12 was needed was software to reside on our kiosk or
13 our public terminal to access that on-line
14 service. So they saw no need to reinvent the
15 wheel.
16 Q Very good. On page 3 of Exhibit 23, under the
17 heading under services, would you read what it
18 says there?
19 A It says, Should call up the credit card capture
20 screen for billing before dialing in to Datapac.
21 Billing is 75 cents/minute with a three minute
22 minumum.
23 Q What was Datapac?
24 A Datapac was their wide area network. It was the
25 access point, if you will, for the dial-up modem

Page 86

1 to call into. It would route you to their
2 database, their proprietary on-line service.
3 Q And they were being billed on a pay-per-use basis
4 for that? If a customer was being billed, that is
5 on a pay-per-use basis?
6 A Yes.
7 Q Is that charge shown here in that sentence?
8 A Yes, it is.
9 Q And that charge was how much?
10 A 75 cents per minute with three minute minumum
11 charge.
12 Q These devices that TouchNet was asked to build
13 were manufactured at what location?
14 A They were manufactured in Lenexa, Kansas.
15 Q Were they ever operated in Lenexa, Kansas?
16 A Yes.
17 Q How were they operated in Lenexa, Kansas?
18 A They were operated in a development mode and
19 testing mode. We would call into the Datapac
20 network from Lenexa, Kansas, and route ourselves
21 to their services for testing our software and
22 proving our software in.
23 Q Was the pay-per-use feature tested at that time?
24 A Yes.
25 Q Was it found to be operational?

Page 87

1 A Yes.
2 Q Was it found to be operational while connected to
3 the on-line service of the Canadian company?
4 A Mediatel.
5 Q Yes, thank you.
6 A Mediatel, yes.
7 Q Very good.
8 A That was one of the specifications of the project.
9 Q Very good. If I could review just briefly, if you
10 will recall the device that was being offered to
11 Mediatel, you have testified it included an
12 on-line page-as-you-use communication service.
13 Would that be a correct characterization of the
14 pay-per-use service?
15 A You said a commercial -- would you repeat that?
16 Q Public on-line pay-as-you-use?
17 A That's correct.
18 Q So any member of the public could address this
19 terminal, use a credit card, be billed on a
20 pay-as-you-use basis and contact that on-line
21 service?
22 A That was -- yes, that was the Mediatel business
23 plan. That is what their specifications called
24 for.
25 Q That is what you made and sold to them?

Page 88

1 A Correct.
2 Q Did your device include a central processing unit?
3 A Yes.
4 Q Did it include telephone access node?
5 A Yes.
6 Q Did it include an internal modem coupled to the
7 CPU?
8 A Yes.
9 Q And coupled to the telephone access node?
10 A Yes.
11 Q Did it include a video display monitor?
12 A Yes.
13 Q Did it include a keyboard for providing user
14 interface to the CPU?
15 A Yes.
16 Q Did it include a credit card reader swipe device?
17 A Yes.
18 Q And that was coupled to the CPU?
19 A Yes.
20 Q Was that credit card device intended to accept
21 payment from a user --
22 A Yes.
23 Q -- for use of the terminal?
24 A Yes.
25 Q Did the terminal include means for accessing a

Page 89

Page 91

1 commercial on-line service?
2 A Yes.
3 Q And what was that commercial on-line service?
4 A iNet
5 Q And was there software installed in the CPU to
6 allow interface with the iNet commercial on-line
7 service?
8 A Yes.
9 Q And to allow the CPU to interface with credit card
10 service centers?
11 A Yes.
12 Q That software we have here, is that the same
13 software that has been used in the other TouchNet
14 devices installed here in the United States?
15 A Yes. I mean, that's the foundation of it, yes.
16 We have actually added more capabilities over the
17 years, but I mean that goes back to 1992 and those
18 were the basic system resources of a TouchNet
19 terminal.
20 Q I would like to turn now to Exhibit 19.
21 A Uh-huh.
22 Q Exhibit 19 are memorandums of -- they are entitled
23 invoice but they indicate payments from Prodigy to
24 TouchFax at that time; is that correct?
25 A That's correct.

1 A Well, they included the ability to accept a credit
2 card, clear a credit card. If there was a charge
3 it would print the receipt. Then if there is no
4 charge, then naturally it doesn't. It, you know,
5 obviously had to use the modem to dial into
6 Prodigy. Telephone, it could use a telephone node
7 for making voice phone calls back to Prodigy if
8 somebody had a help question or something like
9 that.

10 So basically all the system functionality was
11 available to Prodigy to decide on how they wanted
12 to offer that service and in what public location.

13 Q You have testified that Prodigy did not charge
14 users on a pay-per-use basis; is that correct?

15 A That's correct.

16 Q Could Prodigy have charged users using your
17 machine on a pay-per-use basis?

18 A Yes.

19 Q How is that so?

20 A The underlying system of our software has the
21 capability, depending on configuration setup of a
22 particular service to charge or not charge. And
23 when it charges, when you put some dollar amount
24 into the configuration file when you want to
25 charge the user for a pay-per-use activity, then a

Page 90

Page 92

1 Q I believe it has been your testimony, please stop
2 me if I mischaracterize it, that TouchNet --
3 TouchFax at that time had contacted Prodigy
4 regarding having Prodigy software on their device,
5 on TouchNet's device; is that correct?
6 A That's correct. In fact, much prior to this. We
7 had been contacting all the on-line services for
8 probably several years before this.
9 Q Was the Prodigy software loaded on to a TouchNet
10 machine?
11 A Yes.
12 Q Was that machine placed out into public service?
13 A Yes.
14 Q How did Prodigy receive payment from a user for
15 the service?
16 A They have their normal subscription, monthly
17 subscription revenue from the service and that's
18 how they received payment.
19 Q When TouchFax presented this concept to Prodigy,
20 was Prodigy offered an alternative billing system
21 for use, that is for billing of the user of their
22 software?
23 A Yes. They were offered all the capabilities of
24 the system.
25 Q What did those capabilities include at that time?

1 credit card screen will be presented to them and
2 they will be able to swipe their credit card and
3 then there is another flag that says do you want
4 to validate this card right now, dial out to a
5 card processor or not.

6 Because several of our customers didn't think
7 it was worthwhile to validate a \$3 charge. We
8 will take the risk on it. It is no big deal. So
9 that was again an option, if you will, for the
10 service provider.

11 Q So in 1992 to 1993 when you were offering the
12 service to Prodigy, did you demonstrate to them
13 and offer to sell to them a pay-per-use kiosk?

14 A Sure. In fact, we were trying to -- it was our
15 intent, because our business primarily was selling
16 systems to people that wanted to offer services,
17 we thought Prodigy would be a real good owner and
18 operator of public access kiosks. And they
19 thought they might be as well. And this was
20 really more of a trial on our equipment for them
21 to determine what kind of feedback they would get
22 from their subscribers and also how effective they
23 would be at generating new subscribers.

24 So they were also a targeted prospect of
25 buying our system and putting them out there in

Page 93

1 the public. In fact, they had done something
2 prior to that they told us about in airline clubs
3 where they had installed PC's just on a --
4 standard PC's on a desktop in airline clubs so
5 that Prodigy subscribers could go over there and
6 log on. And it created a lot of problems for them
7 because a PC was not -- I mean, it wasn't
8 hardened, if you will, for public access. And so
9 that program didn't survive, but they liked the
10 idea of a contained hardened public access
11 product.
12 Q So when you contacted Prodigy on-line services
13 with an offer to them to utilize your kiosk, you
14 offered to them a device that would accept a
15 credit card; is that correct?
16 A That's correct.
17 Q It would read that credit card?
18 A That's correct.
19 Q It could verify whether or not that credit card
20 was valid?
21 A That's correct.
22 Q It would then report to the user whether their
23 credit card had been accepted?
24 A That's correct.
25 Q It would then connect that user to the Prodigy

Page 94

1 on-line service?
2 A That's right.
3 Q And the machine could also determine how long the
4 user was connected to the Prodigy on-line service?
5 A Sure.
6 Q It could bill them for that too on a pay-per-use
7 basis?
8 A Yes.
9 Q It could then print out to a user a receipt for
10 that pay-per-use purchase from your kiosk?
11 A That's right.
12 Q So the device you offered to Prodigy contained a
13 central processing unit?
14 A Yes.
15 Q A telephone access node?
16 A Yes.
17 Q Internal modem coupled to the CPU?
18 A Yes.
19 Q Was an internal modem also coupled to the
20 telephone access node?
21 A Yes.
22 Q Did it contain a display video monitor?
23 A Yes.
24 Q Was that coupled to the CPU?
25 A Yes.

Page 95

1 Q The display video monitor?
2 A Uh-huh.
3 Q Did it contain a keyboard for the user to use?
4 A Yes.
5 Q Was that keyboard coupled to the CPU?
6 A Yes.
7 Q Did it include a credit card reader swipe device?
8 A Yes.
9 Q Was that coupled to the CPU?
10 A Yes.
11 Q Would it accept payment from a user of the
12 terminal if the subscriber, meaning Prodigy,
13 elected to use that service?
14 A If a service provider like Prodigy, yes, elected
15 to use that service, that is correct, that
16 capability.
17 Q Was that capability offered to Prodigy --
18 A Yes.
19 Q -- in your sales offerings to them?
20 A Certainly.
21 Q Was there means on your terminal when Prodigy was
22 installed on it for accessing on-line services?
23 A Yes.
24 Q So Prodigy provided the means for accessing a
25 commercial on-line service?

Page 96

1 A That is -- yes.
2 Q Was there software installed into the CPU of your
3 machine to allow interface with a commercial
4 on-line service?
5 A Yes.
6 Q Was there software to allow the CPU to interface
7 with a credit card service center?
8 A Yes.
9 Q Was there a printer coupled to the CPU?
10 A Yes.
11 Q I would like to turn to Exhibit 3. Were you using
12 Exhibit No. 3 in the year 1991 as sales material?
13 A Yes.
14 Q Exhibit 3, approximately halfway down the page,
15 has a box titled TouchNet Network Control Center,
16 and in that box is the line, and I'm quoting here,
17 "Upload credit card billing data." Would you
18 explain to us what that references?
19 A That references the network control center of the
20 central management station communicating with the
21 remote public access terminals and capturing, if
22 you will, the credit card billings for that
23 particular terminal and bringing those back to a
24 central spot for further processing.
25 Q How was it getting that credit card information?